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In re Application of: :
Beom-jun Jin : DECISION ON PETITION TO
Serial No.: 10/689,981 : WITHDRAW THE HOLDING
Filed: October 20, 2003 : OF ABANDONMENT
Attorney Docket No.: 5649-1135 :
:

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181 filed on April 27, 2005. There is no fee for this petition.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a proper response to the Office action mailed on September 27, 2004. A Notice of Abandonment was mailed on April 4, 2005.

Petitioner asserts that a response (an election of claims) to the Office action (a restriction requirement) was timely filed on October 20, 2004. To support this assertion, petitioner has submitted a copy of the response and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the response by the Patent and Trademark Office (PTO) on October 20, 2004.

A review of the application file record reveals that the response having been acknowledged on the stamped return postcard as being received in the PTO on October 20, 2004 is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO. Accordingly, it is concluded that the response was timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed April 4, 2005 is hereby **VACATED** and the holding of abandonment is withdrawn.

The copy of the response filed with the petition on April 27, 2005 is accepted since the originally submitted response is lost.

The Technical Support Staff will enter the response filed with the petition on April 27, 2005 into the Patent Application Locating and Monitoring System (PALM) and the examiner will prepare an action based upon that response.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.



Robert Oberleitner, Director
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